

## §41.2

## 22 CFR Ch. I (4–1–19 Edition)

duties under the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty (TIAS 2978; 5 U.S.T. 875.)

(f) *Aliens entering pursuant to International Boundary and Water Commission Treaty.* All personnel employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment (59 Stat. 1252; TS 994.)

[52 FR 42597, Nov. 5, 1987, as amended at 56 FR 30428, July 2, 1991; 61 FR 1835, Jan. 24, 1996; 71 FR 68430, Nov. 24, 2006; 73 FR 18418, Apr. 3, 2008]

### **§41.2 Exemption or waiver by Secretary of State and Secretary of Homeland Security of passport and/or visa requirements for certain categories of nonimmigrants.**

Pursuant to the authority of the Secretary of State and the Secretary of Homeland Security under the INA, as amended, a passport and/or visa is not required for the following categories of nonimmigrants:

(a) *Canadian citizens.* A visa is not required for an American Indian born in Canada having at least 50 percentum of blood of the American Indian race. A visa is not required for other Canadian citizens except for those who apply for admission in E, K, V, or S non-immigrant classifications as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1. A passport is required for Canadian citizens applying for admission to the United States, except when one of the following exceptions applies:

(1) *NEXUS program.* A Canadian citizen who is traveling as a participant in the NEXUS program, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1, may present a valid NEXUS program card when using a NEXUS Air kiosk or when entering the United States from contiguous territory or ad-

jacent islands at a land or sea port-of-entry. A Canadian citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may present a NEXUS program card.

(2) *FAST program.* A Canadian citizen who is traveling as a participant in the FAST program, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1, may present a valid FAST card at a land or sea port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(3) *SENTRI program.* A Canadian citizen who is traveling as a participant in the SENTRI program, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1, may present a valid SENTRI card at a land or sea port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(4) *Canadian Indians.* If designated by the Secretary of Homeland Security, a Canadian citizen holder of an Indian and Northern Affairs Canada (“INAC”) card issued by the Canadian Department of Indian Affairs and North Development, Director of Land and Trust Services (LTS) in conformance with security standards agreed upon by the Governments of Canada and the United States, and containing a machine readable zone, and who is arriving from Canada, may present the card prior to entering the United States at a land port-of-entry.

(5) *Children.* A child who is a Canadian citizen who is seeking admission to the United States when arriving from contiguous territory at a sea or land port-of-entry, may present certain other documents if the arrival meets the requirements described in either paragraph (i) or (ii) of this section.

(i) *Children under age 16.* A Canadian citizen who is under the age of 16 is permitted to present an original or a copy of his or her birth certificate, a Canadian Citizenship Card, or a Canadian Naturalization Certificate when arriving in the United States from contiguous territory at land or sea ports-of-entry.

(ii) *Groups of children under age 19.* A Canadian citizen who is under age 19 and who is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization may present an original or a copy of his or her birth certificate, a Canadian Citizenship Card, or a Canadian Naturalization Certificate when applying for admission to the United States from contiguous territory at all land and sea ports-of-entry, when the group, organization or team is under the supervision of an adult affiliated with the organization and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person who is age 19 or older. The following requirements will apply:

(A) The group, organization, or team must provide to CBP upon crossing the border, on organizational letterhead:

(1) The name of the group, organization or team, and the name of the supervising adult;

(2) A trip itinerary, including the stated purpose of the trip, the location of the destination, and the length of stay;

(3) A list of the children on the trip;

(4) For each child, the primary address, primary phone number, date of birth, place of birth, and the name of at least one parent or legal guardian.

(B) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in paragraph (a)(5)(ii)(A) of this section that he or she has obtained for each child the consent of at least one parent or legal guardian.

(C) The procedure described in this paragraph is limited to members of the group, organization, or team that are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in this part and 8 CFR parts 212 and 235.

(6) *Enhanced driver's license programs.* Upon the designation by the Secretary of Homeland Security of an enhanced driver's license as an acceptable document to denote identity and citizenship for purposes of entering the United

States, Canadian citizens may be permitted to present these documents in lieu of a passport when seeking admission to the United States according to the terms of the agreements entered between the Secretary of Homeland Security and the entity. The Secretary of Homeland Security will announce, by publication of a notice in the FEDERAL REGISTER, documents designated under this paragraph. A list of the documents designated under this paragraph will also be made available to the public.

(b) *Citizens of the British Overseas Territory of Bermuda.* A visa is not required, except for Citizens of the British Overseas Territory of Bermuda who apply for admission in E, K, V, or S nonimmigrant visa classification as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1. A passport is required for Citizens of the British Overseas Territory of Bermuda applying for admission to the United States.

(c) *Bahamian nationals and British subjects resident in the Bahamas.* A passport is required. A visa is not required if, prior to the embarkation of such an alien for the United States on a vessel or aircraft, the examining U.S. immigration officer at Freeport or Nassau determines that the individual is clearly and beyond a doubt entitled to admission.

(d) *British subjects resident in the Cayman Islands or in the Turks and Caicos Islands.* A passport is required. A visa is not required if the alien arrives directly from the Cayman Islands or the Turks and Caicos Islands and presents a current certificate from the Clerk of Court of the Cayman Islands or the Turks and Caicos Islands indicating no criminal record.

(e) *Nationals and residents of the British Virgin Islands.* (1) A national of the British Virgin Islands and resident therein requires a passport but not a visa if proceeding to the United States Virgin Islands.

(2) A national of the British Virgin Islands and resident therein requires a passport but does not require a visa to apply for entry into the United States if such applicant:

(i) Is proceeding by aircraft directly from St. Thomas, U.S. Virgin Islands;

(ii) Is traveling to some other part of the United States solely for the purpose of business or pleasure as described in INA 101(a)(15)(B);

(iii) Satisfies the examining U.S. Immigration officer at that port of entry that he or she is admissible in all respects other than the absence of a visa; and

(iv) Presents a current certificate issued by the Royal Virgin Islands Police Force indicating that he or she has no criminal record.

(f) *Mexican nationals.* (1) A visa and a passport are not required of a Mexican national who is applying for admission from Mexico as a temporary visitor for business or pleasure at a land port-of-entry, or arriving by pleasure vessel or ferry, if the national is in possession of a Form DSP-150, B-1/B-2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, issued by the Department of State.

(2) A visa and a passport are not required of a Mexican national who is applying for admission from contiguous territory or adjacent islands at a land or sea port-of-entry, if the national is a member of the Texas Band of Kickapoo Indians or Kickapoo Tribe of Oklahoma who is in possession of a Form I-872 American Indian Card issued by U.S. Citizenship and Immigration Services (USCIS).

(3) A visa is not required of a Mexican national employed as a crew member on an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States.

(4) A visa is not required of a Mexican national bearing a Mexican diplomatic or official passport who is a military or civilian official of the Federal Government of Mexico entering the United States for a stay of up to 6 months for any purpose other than on assignment as a permanent employee to an office of the Mexican Federal Government in the United States. A visa is also not required of the official's spouse or any of the official's dependent family members under 19 years of age who hold diplomatic or official passports and are in the actual company of the official at the time of entry. This waiver does not apply to the spouse or any of the official's fam-

ily members classifiable under INA 101(a)(15) (F) or (M).

(g) *Natives and residents of the Trust Territory of the Pacific Islands.* A visa and a passport are not required of a native and resident of the Trust Territory of the Pacific Islands who has proceeded in direct and continuous transit from the Trust Territory to the United States.

(h) [Reserved]

(i) *Individual cases of unforeseen emergencies.* Except as provided in paragraphs (a) through (h) and (j) through (l) of this section, all nonimmigrants are required to present a valid, unexpired visa and passport upon arrival in the United States. A nonimmigrant may apply for a waiver of the visa and passport requirement if, either prior to the nonimmigrant's embarkation abroad or upon arrival at a port of entry, the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) district director concludes that the nonimmigrant is unable to present the required documents because of an unforeseen emergency. The CBP district director may grant a waiver of the visa or passport requirement pursuant to INA 212(d)(4)(A), without the prior concurrence of the Department of State, if the CBP district director concludes that the nonimmigrant's claim of emergency circumstances is legitimate and that approval of the waiver would be appropriate under all of the attendant facts and circumstances.

(j) *Fiance(e) of a U.S. citizen.* Notwithstanding the provisions of paragraphs (a) through (h) of this section, a visa is required of an alien described in such paragraphs who is classified, or who seeks classification, under INA 101(a)(15)(K).

(k) *Visa waiver program.* (1) A visa is not required of any person who seeks admission to the United States for a period of 90 days or less as a visitor for business or pleasure and who is eligible to apply for admission to the United States as a Visa Waiver Program applicant. (For the list of countries whose nationals are eligible to apply for admission to the United States as Visa Waiver Program applicants, see 8 CFR 217.2(a)).

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(2) An alien denied admission under the Visa Waiver Program by virtue of a ground of inadmissibility described in INA section 212(a) that is discovered at the time of the alien's application for admission at a port of entry or through use of an automated electronic database may apply for a visa as the only means of challenging such a determination. A consular officer must accept and adjudicate any such application if the alien otherwise fulfills all of the application requirements contained in part 41, §41.2(1)(1).

(1) *Treaty Trader and Treaty Investor.* Notwithstanding the provisions of paragraph (a) of this section, a visa is required of a Canadian national who is classified, or who seeks classification, under INA 101(a)(15)(E).

[52 FR 42597, Nov. 5, 1987]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §41.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### **§41.3 Waiver by joint action of consular and immigration officers of passport and/or visa requirements.**

Under the authority of INA 212(d)(4), the documentary requirements of INA 212(a)(7)(B)(i)(I), (i)(II) may be waived for any alien in whose case the consular officer serving the port or place of embarkation, or the Deputy Assistant Secretary of State for Visa Services or his or her designee, is satisfied after consultation with, and concurrence by, the appropriate immigration officer, that the case falls within any of the following categories:

(a) *Residents of foreign contiguous territory; visa and passport waiver.* An alien residing in foreign contiguous territory who does not qualify for any waiver provided in §41.1 and is a member of a visiting group or excursion proceeding to the United States under circumstances which make it impractical to procure a passport and visa in a timely manner.

(b) *Aliens for whom passport extension facilities are unavailable; passport waiver.* As alien whose passport is not valid for the period prescribed in INA 212(a)(7)(B)(i)(I) and who is embarking for the United States at a port or place remote from any establishment at

which the passport could be revalidated.

(c) *Aliens precluded from obtaining passport extensions by foreign government restrictions; passport waiver.* An alien whose passport is not valid for the period prescribed in INA 212(a)(7)(B)(i)(I) and whose government, as a matter of policy, does not revalidate passports more than 6 months prior to expiration or until the passport expires.

(d) *Emergent circumstances; visa waiver.* An alien well and favorably known at the consular office, who was previously issued a nonimmigrant visa which has expired, and who is proceeding directly to the United States under emergent circumstances which preclude the timely issuance of a visa.

(e) *Members of armed forces and coast guards of foreign countries; visa and passport waiver.* An alien on active duty in the armed forces or coast guard of a foreign country and a member of a group of such armed forces or coast guard traveling to the United States, on behalf of the alien's government or the United Nations, under arrangements made with the appropriate military authorities of the United States, coordinated within the U.S. Government by those U.S. military authorities, and approved by the Department of State and the Department of Homeland Security for such visit.

(f) *Landed immigrants in Canada; passport waiver.* An alien applying for a visa at a consular office in Canada:

(1) Who is a landed immigrant in Canada;

(2) Whose port and date of expected arrival in the United States are known; and

(3) Who is proceeding to the United States under emergent circumstances which preclude the timely procurement of a passport or Canadian certificate of identity.

(g) *Authorization to individual consular office; visa and/or passport waiver.* An alien within the district of a consular office which has been authorized by the Department, because of unusual circumstances prevailing in that district, to join with immigration officers abroad in waivers of documentary requirements in specific categories of